MICHIGAN HOUSING COUNCIL
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Recommendations of the

MICHIGAN HOUSING COUNCIL[1]

Regarding the

Proposed Michigan Qualified Allocation Plan

November 13, 2007

The Low Income Housing Tax Credit (LIHTC) is the single most important federal resource for increasing the supply of affordable housing for low and moderate income households. MSHDA administers the LIHTC in Michigan and utilizes it in most of its multifamily lending programs. The LIHTC is a critical source of equity for newly constructed or rehabilitated multi-family housing developments. The LIHTC program does not provide ongoing operating subsidies to reduce rents, although it does impose maximum limits on the rents that can be charged. Although rent limits are imposed, there is no limit on increased operating costs like taxes, insurance, and utilities. Thus, great care must be taken in underwriting loans and purchasing the housing credit in order to avoid creating developments that are unable to pay their mortgage loans and operating expenses, thereby risking foreclosure and scandal.

MSHDA derives a majority of their operating income from its multi-family direct loan programs through the various fees it charges and through its interest override. Since all of these programs utilize the LIHTC, they are subject to the QAP and must meet the threshold requirements of the QAP. Consequently, great care must be taken in setting the threshold requirements so as not to affect adversely the attractiveness of the MSHDA direct loan programs and MSHDA's future revenues.

Prudence dictates that incremental, rather than sweeping, changes to the QAP are preferable in order to avoid the unintended consequences of hasty and unwarranted change. Many believed the new underwriting standards utilized in sub-prime home mortgages were a wonderful method for increasing home ownership among modest income households. Unfortunately, the unintended consequences resulting from these new standards are a record number of loan failures, the terrible pain and suffering of the families that were "served" by these loans, and the enormous negative impact on our national financial markets and the national economy.

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[1] The Michigan Housing Council is one of the oldest statewide associations of affordable housing professionals in the United States and represents owners, developers, managers, general contractors and subcontractors, architects, engineers, attorneys, financial groups, lenders, insurers, accountants, market analysts, tax credit syndicators, and other consultants, non-profits and businesses involved with Michigan's affordable housing industry.

Since August, some improvements have been made to the proposed Michigan Qualified Allocation Plan. However, major policy issues remain.

I. December Funding Round

Michigan needs good economic news, and we need it now. The failure of MSHDA to proceed with a second tax credit round in 2007 has delayed nearly $400 million in economic activity until next year. We do not understand, nor has anyone stated publicly, the public policy rationale for delaying $400 million in economic activity to our state at this time, or how such an important decision like this could be made without public debate or discussion.

Further, we do not understand why a hastily scheduled funding round for December 15th under the 2006-2007 QAP should be limited to only 25% of the 2008 annual credit ceiling or why the next round must be held hostage to approval of a new QAP by MSHDA and the Governor. A normal fall tax credit funding round usually accounts for 50% of the next year's credit ceiling. Why should the additional $200 million of economic activity for 50% be delayed further or tied to a new QAP?

> **Recommendation 1: We urge the Authority Board to proceed immediately with this funding round at 50% of the 2008 credit.**

II. QAP Holdbacks

The supportive housing holdbacks and requirements appear at several different levels of the QAP, making it difficult to determine the full impact of these changes. Twenty percent of the Detroit, Hamtramck and Highland Park holdback is allocated to supportive housing for persons who are homeless. Additionally, there is a holdback of 15% of the total LIHTC for persons who are homeless or have special needs. Finally, there is a threshold requirement that 10% of the units in any given LIHTC project shall give leasing priority to special needs population. In combination these provisions appear to set aside or mandate that between 11% and 28.5% of the 9% credits be utilized for the homeless or special needs populations as well as 10% of all 4% credits.

> **Recommendation 2: We urge the MSHDA Board to review the various holdbacks to determine whether it is their intention to direct such a high percentage of this precious housing resource to these populations, and if so, whether the other resources necessary to supplement the credits are available at the scale required. Every credit held back and not ultimately used for the holdback purposes is a credit delayed, if not denied, to other deserving Michigan households.**

In part, due to the poor economic conditions in Michigan, many existing MSHDA financed or LIHTC properties are experiencing higher than normal levels of vacancy and are suffering financial stress. Many of the owners of these properties would be willing to participate in a program of providing housing for homeless or special needs populations, provided that Section 8 vouchers and the required supportive services are available. MSHDA could begin housing these households now rather than waiting the 18 to 24 months that new construction or rehabilitation will require.

> **Recommendation 3: We urge the MSHDA Board to explore using the existing stock of MSHDA financed or LIHTC housing to provide decent housing for homeless persons and households with special needs instead of waiting on new projects.**

Michigan has been a national leader in addressing the importance of preserving existing affordable housing for over 10 years. MSHDA has provided incentives for preservation through loan programs and through the allocation of credits as reflected by a 30% set-aside in the current QAP. The majority of state housing finance agencies have followed MSHDA's historical lead in preservation and are now including similar sized set-aside's in their QAP's. Under the August draft of the proposed QAP, the preservation set-aside was removed completely and, if that QAP had been approved, Michigan would have been the *only* state in the Great Lakes region not to provide preservation incentives in its QAP. Recently, a 10% preservation hold back was added. MSHDA staff has indicated scoring preferences will potentially allow 29% of the credit to be allocated to preservation proposals; however, it is difficult to see how the current proposal scoring provisions will meet this mark. The rental market in Michigan is obviously down and incentives to preserve existing affordable units are a sound housing policy and represent an efficient use of a scarce federal resource.

Recommendation 4: MSHDA should remain a leader in preserving affordable housing by requiring that 30% of the credits in each holdback or set aside category go to preservation proposals. Additionally, the modest preservation holdback of 10% should be retained.

III. Threshold Requirements

Threshold Requirements apply to all developments utilizing Low Income Housing Tax Credits, including MSHDA's Direct Loan Program, The Pass-Through Program, as well as the 9% LIHTC projects. The draft QAP has dramatically increased the number of threshold requirements beyond those required under any previous plan and those required by federal law.

1. 10% Supportive Housing

The requirement that 10% of all units in all projects have leasing priority for tenants who meet MSHDA's definition of special needs population, with rents limited to 30% of Area Median Income (AMI) imposes a significant economic burden on every project. In Wayne County this reduces the maximum monthly rent for a two bedroom apartment or townhouse from $943 to $471, or a difference of $5,664 in income per year. In a 100 unit property this amounts to $56,640 per year! It is already difficult to identify and develop financially feasible LIHTC projects in Michigan.

Adding this level of financial burden can only result in the abandonment of the development of many otherwise feasible and desirable projects. Many of the projects which proceed in spite of this burden will meet with serious financial and cash flow problems in the future. An unfunded mandate of this type will make lenders and LIHTC purchasers unwilling to participate in the Michigan LIHTC program.

Although MSHDA staff has talked about utilizing the Section 8 vouchers that MSHDA administers in connection with this threshold requirement, there is no provision addressing this in the QAP.

Requiring 10% of all of the units in a project is not reasonable for those projects that have less than 100% LIHTC units.

Recommendation 5: We urge the MSHDA Board to add language to the section of the QAP limiting the requirement to 10% of the LIHTC units in a project and only to those cases where a Section 8 voucher is available to make up the difference between the rent at 60% of AMI and 30% of the household's income and where there is a "quality service organization" ready and willing to provide the services necessary.

The Threshold Requirement in the proposed QAP requires that the owner and management agent give the service organization a 60 day period in which to fill a set-aside unit with a supportive housing tenant. After 60 days, if no supportive housing tenant is available, the owner and management agent may fill the unit with another qualified tenant. With average unit turnover, this will mean that up to 3,000 unit-days of rent ($35-70,000 annually) might be lost in a 100 unit project.

Recommendation 6: The maximum period an owner and management agent should be required to hold a unit off the market should be reduced from 60 to 30 days. If an eligible supportive housing household with a Section 8 voucher and required supportive services is not available the owner and management agent should be allowed to rent to another LIHTC eligible household.

Senior citizen developments already serve a population with special needs. In many cases a senior development will not be compatible with the needs of those requiring supportive housing.

Recommendation 7: We urge the MSHDA Board to exempt senior citizen housing from this threshold requirement.

2. **Disadvantaged Business Enterprise Goals, Health Care Coverage Requirements and Low-Income Worker Earned Income Tax Credit Notification Requirements**

These requirements will add to project costs, although it is impossible to estimate the amount of the increased cost. Increased costs will reduce the number of units that can be developed with the LIHTC. Even if the increased cost is only 1%, do we wish to have only 99% of the LIHTC units we could have? Much of the increased cost will go to compliance and record keeping rather than direct benefits. Have benefits been identified?

Recommendation 8: We urge the MSHDA Board to delete this requirement from the QAP.

3. **Submission of letters from two equity investors**

This requirement will be difficult, if not impossible to meet and may give national equity investors another reason not to invest in Michigan projects. The type of letter described is only produced after many hours of negotiation. The terms include gross price, pay-in schedule, numerous deadlines and goals, general partners' duties, representations, and guarantees. In practice, two or more equity investors are approached and discussions of possible terms are conducted, after which one is chosen and after much negotiation and many drafts the written proposal is finalized.

Recommendation 9: We urge the MSHDA Board to require a letter from only one equity investor.

4. **Green Community/New Urbanism Threshold Requirements**

These requirements were added to the proposed QAP in late October, after the public comment period had closed, and many of them appear to be more appropriate to New York City rather than Michigan and will result in the elimination of many very desirable projects from consideration for the LIHTC program For example, the requirement that the "location must include only parcels of land previously developed beyond agriculture or forestry use" will prevent the use of properties within municipal boundaries that were never previously developed. The requirement that the project site be within ¼ mile of four neighborhood shops, services, and facilities could eliminate many potential sites in Detroit and other depressed cities. These requirements were added to the QAP very late and appear to have had little or no public review.

Recommendation 10: We urge the MSHDA Board to delete all Green Amenities threshold requirements from the QAP and to appoint a task force of MSHDA staff, architectural and planning practitioners and other affordable housing practitioners to review these items and propose to MSHDA and the Authority Board, within 6 months, revised requirements that address Michigan needs and realities.

5. **Requirement that there be an extended use commitment to 90 years.**

Our ability to predict future patterns of living, economic development and housing needs even a few years into the future is very limited. Attempting to commit real estate to one, very limited use, for more than 30 years may result in the wrong housing in the wrong place. Further, this kind of restriction may be a barrier to future investment and renovation that will be required to keep the properties well maintained and avoid obsolescence. We need only look at some of the public housing that was considered cutting edge in the 1950's and 60's to see some of these forces at work.

Recommendation 11: We urge the MSHDA Board to adopt the federally mandated requirement of 30 years rather than a new standard of 90 years.

IV. Threshold Requirements – Preservation Projects

It is proposed that 10% of the LIHTC units must have rents and incomes set at 40% of AMI and 10% at 30% of AMI. As compared to the 60% of AMI, this will cost a 100 unit, 100% LIHTC project, located in Wayne County approximately $7,870 per month or $94,440 per year of lost revenue. Why is this requirement imposed on preservation developments? Why not utilize point scoring as an incentive for low income targeting, rather than requiring it? Requiring such targeting will eliminate the preservation option for many properties in a period when preservation is desperately needed due to Michigan's economy. By definition, preservation properties are already serving households eligible for affordable housing.

Recommendation 12: The low income targeting requirement should be deleted from the Preservation requirements. Such targeting, if desirable, should be achieved by incentives in the point scoring.

V. **Scoring Criteria**

1. **Up to 20 points for utilizing MSHDA financing**

There is no advantage gained for the project or its eventual residents that inherently results from MSHDA financing. Although up to 10 points can be awarded under the 2006-2007 QAP for MSHDA financing, points were less important due to the threshold lottery combination. Under the proposed QAP where even one point difference will decide allocations, this will have a major impact, with no identifiable benefit to low income households.

Recommendation 13: We urge the MSHDA Board to delete this scoring criterion from the QAP.

2. **Increase in points from 5 to 10 for nonprofit organizations**

The 2006-2007 QAP awarded 5 points for nonprofit organization participation. The proposed QAP increases this to 10 points. Under the proposed QAP, where even one point difference will decide allocation, this will have a major impact and give nonprofit organizations an unreasonable competitive advantage.

Recommendation 14: The additional points for nonprofit organization participation should be maintained at 5 points.

3. **Negative Points for Previous Participation**

The 2006-2007 QAP awards negative points to project sponsors, management companies, and "affiliated entities" under certain circumstances. Although MSHDA has had a long standing policy to awarding negative points in similar situations, we are concerned that there is no definition of "related entities" in the QAP and that there is no process for awarding the negative points apart from a funding round. It is fundamentally unfair to an applicant to award negative points after an application has been submitted and with no opportunity to respond to a MSHDA determination that negative points are to be awarded.

Recommendation 15: MSHDA must provide a definition of "affiliated entity" in the proposed QAP. MSHDA must provide a process for assessing and determining whether or not to award negative points prior to any tax credit funding round. If a decision is made to award negative points to a sponsor, a management company, or an "affiliated entity", a final decision must be made and published on MSHDA's website 90 days before each funding round. The 90 day period will allow other applicants to modify their applicationsif they are affiliated with a party receiving 20 negative points. No negative points can be awarded during a tax credit funding round that have not been disclosed to the public 90 days prior to the tax credit funding round.

VI. Application Dates under Addendum III

Projects that commit 100% of the units for supportive housing for targeted populations (chronically homeless, domestic violence survivors, etc) may apply early, on January 2, while those serving lower numbers of units must wait until April 1. Ranking the projects according to the date received will result in a heavy preference for, if not exclusive use of credits by, projects which are 100% supportive housing. This creates "mini-institutions" and runs counter to the effort to integrate these populations throughout the community. The early application may also provide an unfair advantage to two projects actively under review and supported by MSHDA. If the MSHDA projects are funded, there will be little or no credit available for which others can compete.

Recommendation 16: Eliminate the early application date and provide the highest points to those projects that are strategically integrated.

VII. Other Concerns

Waivers

Waivers are often necessary to address issues that prevent otherwise desirable projects from proceeding. However, it is also very important to preserve MSHDA's transparency and to ensure all parties are treated fairly.

Recommendation 17: Any provision for any kind of waiver of requirements or transfer of unallocated holdbacks should require Authority Board approval.

VIII. Technical Issues

1. The proposed QAP does not specify deadlines for award of allocations. The current language could suggest up to 120 days after the application date. **It is recommended that a 90 day deadline be established in the QAP for the award of allocations.**

2. The MSHDA Market Requirements dated October 9, 2007, require clarifications and some revisions. For example, market populations for "congregate senior housing" are limited to those 75 years and older. Existing MSHDA financed optional congregate service senior developments have more than 50% of the original moved-in households at less than 75 years of age. **It is recommended that a task force of MSHDA staff, consultants, market analysts, and developers be formed to review and propose needed changes to the Market Study Requirements.**